IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-21-12-2005

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mrs. CHITRA VENKATARAMAN

Writ Petition No. 41301 of 2002

1. Union of India,
   represented by the Secretary
   MOD (DP & S),
   DHQ PO, New Delhi-11.

2. The Chairman,
   Ordnance Factories Board,
   10-A, SK Bose Road, Calcutta,
   700 011.

3. The Senior General Manager,
   Heavy Vehicles Factory,
   Avadi, Chennai-600 054. .. Petitioners.

Vs.

1. Central Administrative Tribunal,
   represented by its Registrar,
   High Court Buildings,
   Chennai-600 104.

2. S.A.S. Thirumal,
3. M. Sampath,
4. T. Elangovan,
5. G. Kesavan,
6. M. Peraiah
7. P. Kuttian
8. G. Lakshminarayanan
9. G. Janardhanan
10. A.T. Sankaran
11. P. Jayavelu
12. R. Raman
13. P. Syam Sunder
14. Devaiah
15. G.C. Munuswamy

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16. M. Ramesh
17. S. Bava Abdul Gani
18. S.R. Dutta Roy
19. C.Subbaiah
20. D.Sathyanarayanam
21. T.K.Sasidharan Nair
22. A.Munirathinam
23. A.Duraikannu
24. D.Singaravelu
25. S.Vajiiravelu
26. G.Karunanidhi
27. M.Sundaram
28. Premakumari
29. I.Devanayaki
30. D.Lakshmanan
31. E.Anthony Dass
32. K.K.Radhamma
33. S.Lakshmanan
34. K.V.Simon
35. Chella Chiristudass
36. M.Kamalakkannan
37. N.Devaki
38. M.Dhanalakshmi
39. Mary Stephen
40. Malathy Rajanarayanan
41. Dorothy Chandrakanthab
42. M.Radhakumari Thampatty
43. S.Kanagasabapathy
44. K.Udayakumar
45. K.Bagyalakshmi
46. Vanaja Gopal
47. M.Sheik Mohamed
48. P.S.Perundurai Selvam
49. K.Selvadurai
50. P.Venkatarathnam
51. Edward Navaneetham
52. S.Nageswara Rao .. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for proceedings of first respondent/Central Administrative Tribunal, Chennai Bench dated 03-05-2002 made in O.A.No. 778 of 2001 and quash the same.

Mr. K. Veeraraghavan, Senior Central Government Standing counsel:- For petitioners.

Mr. K.M. Ramesh:- For Respondents 2 to 52.

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ORDER

(Order of the Court was made by P. Sathasivam, J.,)

Aggrieved by order of Central Administrative Tribunal, Chennai Bench dated 03-05-2002, made in Original Application No. 778 of 2001, Union of India, Ministry of Defence (DP and S), DHQ PO, New Delhi-11, Ordinance Factories Board, Calcutta and Senior General Manager, Heavy Vehicles Factory, Avadi, Chennai-54 have filed the above Writ Petition.

2. The case of the petitioners-Department is briefly stated hereunder:

As a policy decision of the Government of India, Ministry of Defence has decided to abolish the post of Checkers in Ordnance Factories Organisation. Based on the same, Ordnance Factories Board, Calcutta had issued letter No.288/A/N1/Checker dated 17-03-1981 to abolish the post of Checkers in Heavy Vehicles Factory in a phased manner. On implementation of the order, all existing Checkers were either promoted to Lower Division Clerk ("LDC" in short)/ Assistant Store Keeper ("ASK" in short) with all financial benefits and fixation of pay under Fundamental Rule 22-C.

3. The respondents 2 to 52 herein, applicants in O.A.No. 778 of 2001 before the Tribunal, had been granted one promotion on abolition of Checkers to LDC/ASK with all financial benefits and fixation of pay under Fundamental Rule 22-C and treated against the first regular promotion and the regular promotion from LDC/ASK to UDC/DEO/Supervisor has been treated as second promotion, the applicants in the said Original Application had not been considered for further up-gradation as per rules/guidance of DOP and TOM dated 9-8-1999, which are having the force of law. Aggrieved by this, S.A.S. Thirumal and 50 others, applicants filed the above Original Application before the Central Administrative Tribunal, Chennai Bench to call for the records and files relating to the letter issued by the Heavy Vehicles Factory, Chennai bearing No. 3(73) ESTT/2000 dated 14-11-2000 and set aside the same and consequently direct the department to grant the benefit of pay fixation in the scale of Rs.5000-8000 to the applicants on par with their juniors who have been given the said scale of pay. The Central Administrative Tribunal, after finding that when the applicants were appointed as LDC/ASK after abolition of the post of Checkers, they have not been given financial upgradation or promotion in accordance with the RRs, but they were accommodated/absorbed against the post of LDC/ASK, quashed the impugned letter dated 14-11-2000 and allowed the Original Application. By doing so, the Tribunal has also

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directed the department to consider the case of the applicants for extending the benefit of Assured Carrier Progression Scheme ("ACP Scheme" in short). Aggrieved by the said decision, the department has filed the present writ petition.

4. Heard Mr. R. Veeraraghavan, learned Senior Central Government Standing counsel for the petitioners and Mr. K.M. Ramesh, learned counsel for respondents 2 to 52.

5. The only point for consideration in this writ petition is, after abolition of the post of Checkers, whether the appointment of respondents 2 to 52 herein/applicants as LDCs/ASKs is a promotion as claimed by the Department or it is only a accommodation or absorption as claimed by the applicants/respondents 2 to 52 herein.

6. It is not in dispute that the respondents 2 to 52 were employed in the Heavy Vehicles Factory, Avadi, Chennai on various dates in the cadre of Checker which post was abolished in the year 1981. It is the claim of the respondents 2 to 52 that consequent on the abolition of the said post, they were re-designated as LDC/ASK.

7. The Government of India, Ministry of Personnel and Training by its letter OM.35034/1/97 ESTT (D)dated 9-8-99 introduced "Assured Career Progression Scheme" (ACP) for the benefit of the employees who have not been given promotion in the normal channel for over 12 years and 24 years respectively. The Heavy Vehicles Factory, Avadi gave effect to the said ACP in its factory under Factory Order No. 1719 dated 25-10-99 and granted financial up-gradation to 142 employees employed in the Heavy Vehicles Factory. According to the respondents, by granting such financial up-gradation, the third petitioner-Senior General Manager, Heavy Vehicles Factory, Avadi, granted two up-gradations to juniors to them who are directly working under them in the cadre of Store Keeper and fixed their pay in the pay scale of Rs.5000-8000 whereas, the pay scale of respondents 2 to 52 is only Rs.4000-6000 even they are holding higher position as well as discharging higher responsibility. Thus, according to them, the juniors to the respondents 2 to 52 both in service and in cadre are now getting higher pay scale. When they made a representation for considering their case for the grant of financial up-gradation under ACP, the third petitioner/Heavy Vehicles Factory, Avadi replied stating that they had been granted two promotions in their career, namely, one from Checker to Store Keeper and the other from Store Keeper to Supervisor and hence they were not eligible for financial up-gradation under the ACP. As said earlier, now we have to see whether on abolition of the post of Checker, the posting of the respondents 2 to 52 as LDC/ASK amounts to promotion or up-gradation.

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8. It is the definite case of the Department that while abolishing the post of Checker, all Checkers were promoted as LDC/ASK in the year 1980-81. While promoting to a higher rank, these Checkers were given all financial benefits/pay fixation benefits under Fundamental Rule 22 and assigned a higher rank also. In this regard, it was demonstrated before us that as per the policy decision, it has been decided that in future no post of Checker will be created and the said post was cancelled with effect from the order dated 5-3-80. It has been decided that the Checkers who fulfil the minimum educational qualifications for direct recruitment to the post of LDC/ASK or those who do not possess the prescribed minimum educational qualifications but rendered at least 3 years continuous service as Checker as on 4-1-80 will be promoted as LDC/ASK in phased manner, and that the Checker not fulfilling the eligibility criteria laid down for promotion will continue to hold the post of Checker till he qualifies for promotion or retirement or otherwise. The Department has also demonstrated and cited many instances namely an individual who was Checker remained as a Checker even after the policy decision due to lack of the required eligibility criteria and it is only to emphasis the point that immediately after the abolition of the post of Checker, the Checkers were not automatically elevated to LDC/ASK and on the contrary they were promoted only after following the eligibility criteria. The facts and figures furnished by the Department would show that out of 51 erstwhile Checkers promoted to LDC/ASK as per the procedure established through law, 23 were promoted prior to the orders dated 17-3-1981 issued exclusively for Heavy Vehicles Factory, Avadi. 28 others were also promoted to LDC/ASK on various dates ranging from 17-3-1981 to 25-10-1987 on the basis of eligibility condition and not on one day absorption or re-designation, as claimed by respondents 2 to 52. The Department has also placed materials to show that the respondents have got two promotions from Checker to LDC/ASK and from LDC/ASK to UDC/Supervisor. The LDC/ASK is a lower post and UDC/Supervisor is next higher grade. As rightly pointed out, this does not mean the lower grade employees directly placed under the petitioners or the petitioners are extracting work from them. It was highlighted that since the lower grade employees are not got any promotions, they were granted financial up-gradation as per the scheme viz., ACP Scheme.

9. With regard to anomaly due to up-gradation, such up-gradation based on the Scheme, will not make any anomaly as per para 8 of Annexure-I of the Scheme dated 9-8-89, namely,

"The financial up-gradation under ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial up-gradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme".

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10. The information furnished by the Department would show that consequent on the abolition of the post of Checker, all existing Checkers in Heavy Vehicles Factory, Avadi were promoted to the post of LDC/ASK since, according to them, they fulfilled the eligibility conditions laid down in Ordnance Factory Board letter dated 6-3-80 in phased manner ranging from the date from 17-3-1981 to 25-10-1987. As said earlier, according to the Department, the Checkers promoted to LDC/ASK were given higher pay scale and fixation of pay. This aspect has been demonstrated by furnishing the following figures. They were (Checkers) promoted from lower scale of Rs.225-5-260-6-290-EB-6-308 (Checker) to Rs.260-6-290-EB-6-326-8-366-EB-8-390-10-400 (LDC/ASK). For example at the time of promotion, the second respondent-S.A.S. Thirumal on 1st February, 1978, was drawing the pay of Rs.296/- and his pay was fixed on promotion as Rs.308/- with increase in pay of Rs.12/- in the year 1978 which is not paltry as stated by the respondents, since the amount given is to be correlated with period.

11. It is relevant to note after the order of the Tribunal dated 3-5-2002, the matter has been referred to DOP and T by Ministry of Defence and the clarification received from DOP and T through the Ministry states that the "Regular promotion" in the context of ACPs which clearly imply placement in a higher scale in the hierarchy whether functional or otherwise. It is further explained that placement in higher scale in hierarchy of incumbents of posts of Checker following its abolition, was subject to the fact that it involved assuming duties of higher post also in hierarchy, it was a clear case of "promotion" for the purpose of ACPs both in terms of position as also in terms of clarification No.35 issued earlier. The above clarification of DOP and T makes it clear that where rationalization/re-structuring involves creation of a number of new hierarchical grades in the rationalized set-up and some of the incumbents in the pre-rationalised set-up are placed in the hierarchy of the restructured set-up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre-structured/pre-rationalized grade, then this will be taken as promotion/up-gradation. As rightly pointed out, where placement in a higher grade involves assumption of higher responsibilities and duties, then such up-gradation will be viewed as promotion/up-gradation.

12. The information furnished in the case of S.A.S. Thirumal (2nd respondent herein) would show that he was promoted to the post of Supervisor during 1994 from Store Keeper and his pay has been fixed from Rs.1,325/- to Rs.1,380/- with financial benefit of Rs.55 in the year 1994. As rightly pointed out, the statement of the respondents that the financial benefit of Rs.12/- received in the year 1978 (almost 25 years back) on promotion from Checker to LDC/ASK is paltry and the financial benefit of Rs.55/- received in

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the year 1994 (8 years back) is real promotion with substantial financial benefit is not justified, since the law never contemplates any assumed two concepts as "Real Promotion" and "Promotion".

13. As rightly pointed out, since the respondents were enjoyed two promotions from Checker to LDC/ASK and LDC/ASK to UDC/Supervisor, they are not entitled for financial up-gradation under ACP Scheme. The financial up-gradation under ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority/position. As such, there shall be no additional financial up-gradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme. This being the position, there is no pay anomaly as claimed by the respondents.

14. As rightly pointed out, the conclusion of the Tribunal that the applicants/respondents 2 to 52 herein are on accommodation/absorption is wrong, since it was pointed out before us that out of 51, 23 respondents were promoted much earlier i.e., prior to the Ordnance Factory Board Order, Calcutta dated 17-3-1981. The dates of promotion of those respondents have been furnished in Ground No.3 of the affidavit filed in support of the above writ petition. A perusal of the said details shows that 23 respondents were promoted prior to the Ordnance Factory Order, Calcutta dated 17-3-1981 which cannot be considered as accommodation/absorption as concluded by the Tribunal. When 23 respondents were promoted much earlier to the orders of the Ordnance Factory Board, we are of the view that the Tribunal cannot come to the conclusion that the promotion ordered as much earlier to the orders dated 17-3-1981 as mere accommodation/absorption. The Department has already demonstrated that the promotions ordered based on their merit and fulfilling other conditions, the respondents were promoted on various dates and not as an absorption/accommodation on one day.

15. As per Statutory Rules and orders of 1976, the post of Checker was feeder post to the higher post of LDC. The post of LDC was in the pay scale of Rs.260-400/-, whereas the post of Checker having the pay scale of Rs.225-308. Thus, as per SRO, LDC was a promotion post to the post of Checker in 1980. In such a circumstance, as rightly explained, the Board's instruction never meant nor envisaged up-gradation of the existing post of Checker to the promotional post of LDC violating the provisions of SRO of 1976. The Tribunal has lost sight of the above relevant Act and Rules while considering the claim of the applicants.

16. It was also demonstrated by the Department that the movement of Checkers to LDC/ASK in the year 1980 was promotion and not up-gradation by pointing out the fact that in the case of Checkers, the provision of F.R. 22(C) was applied on their promotion

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to the post of LDC. Had it been up-gradation, as is being made out to be by the applicant, the pay fixation of erstwhile checkers would not have been regulated by F.R. 22(C). Regulation of the pay fixation cases in 1980 clearly indicates that the movement of Checkers to LDC was real promotion and not up-gradation. The Board instructions dated 5-3-1980 and 6-3-80 clearly stipulate that the then existing Checkers were to be promoted to the grade of LDC in phased manner. It was also submitted that all the procedural formalities and necessities like availability of vacancy in the promotional post of LDC, preparation of select list and regulation of cases under CCS CCA Rules 1965 with respect to individuals against whom disciplinary proceedings were pending etc., were scrupulously followed. For instance, one Sri S.K. Awasthy, OEFC was initially promoted from the post of Checker to LDC with effect from 18-6-1976. Subsequently, he was reverted to the post of Checker with effect from 24-4-1978, because there were a series of penalties against him. He could be finally promoted to the post of LDC from the post of Checker with effect from 21-1-91 only. In the case of up-gradation of a particular post, all the incumbents of that posts are placed in the higher/upgraded post without following the procedural formalities associated with the exercise of promotion as brought out above. DPC proceedings and other formalities, which are being followed in all regular promotion cases, were also followed in this case also. These material aspects clearly show that the Tribunal's order is bad in law.

17. As pointed out earlier, though the Tribunal has concluded that the promotion given to the Checker to LDC/ASK as per Board's order dated 17-3-81/5-3-80 is only an accommodation/absorption, the Board's order dated 5-3-80 para 1.1 clearly states that the existing Checkers are to be promoted to LDC/ASK against the additional post of LDC/ASK. Para 2.0, the eligibility criterion for promotion to LDC/ASK has been given and relaxation to SRO has been issued as one time measure to abolish the post of Checkers and promote them as LDC/ASK as a policy decision of the Government of India.

18. Mr. K. Veeraraghavan, learned senior Central Government Standing counsel, has also brought to our notice the decision of the Central Administrative Tribunal, Mumbai Bench at Nagpur dated 24-9-2001 in Original Application No. 2180 of 2000 (B. RATANPURE AND OTHERS v. UNION OF INDIA) wherein, while considering the very same issue, the Tribunal has concluded that: "On careful consideration of the rival contentions and perusal of the facts brought on record, we are convinced that the applicants have no case. It is not disputed that the applicants were recruited as checkers in 1977 and were made LDCs only on abolition of the posts and on promotion...." At the end of the same paragraph it is stated that, " It is thus clear that the action of the respondents in

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placing the applicants who became LDCs on promotion from Checker, below those who were already LDCs on 1-4-80...."
It is clear that the Mumbai Bench of the Tribunal has concluded that the post of Checker is a lower post and LDC/ASK is the promotional post to the Checker and on abolition of Checker post, all existing Checkers were promoted to LDC/ASK. Though the said decision was brought to the notice of the Tribunal, Chennai Bench, unfortunately, the Bench has not followed the same.

19. Under these circumstances, we are satisfied that the Tribunal failed to take note of relevant materials and committed an error in holding that after abolition of the post of Checker, the appointment of respondents 2 to 52 herein as LDC/ASK is neither a promotion nor a financial up-gradation, but it is only an accommodation/absorption in the post of LDC/ASK. On the other hand, we are satisfied that the Department has established that the post of Checker is a lower post and LDC/ASK is a promotional post to the Checker and on abolition of the said post (Checker), all existing Checkers were promoted to LDC/ASK. We are also satisfied that the Tribunal has failed to consider all the factual aspects discussed above and committed an error in quashing the order dated 14-11-2000 of the Heavy Vehicles Factory, Avadi. The order of the Tribunal dated 3-5-2002 made in O.A.No. 778 of 2001 cannot stand; accordingly quashed. The Writ Petition is allowed. No costs.

R.B.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To
The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-104

+1 CC to Mr.K.Veeraraghavan, SCCG, SR No.50455

+1 CC to Mr.K.M.Ramesh, Advocate, SR No.50032

TEJ(CO)
BG/2.1.2006

P.D. Order in
W.P.No.41301 of 2002

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